

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE,

PETITIONER,

v.

RAJAN B. MASIH, M.D.,

RESPONDENT.

SECOND AMENDED COMPLAINT AND NOTICE OF HEARING

Now comes the Petitioner, the West Virginia Board of Medicine ("Board") and for its Second Amended Complaint against the Respondent, Rajan B. Masih, M.D. ("Dr. Masih"), and states as follows:

1. The Respondent, Dr. Masih, is licensed to practice medicine in West Virginia and has been so licensed in West Virginia since 1997.
2. The Respondent's license is identified as West Virginia License No.19166, and his address of record with the Board is in Petersburg, West Virginia.
3. In November 2008, the Board received a complaint against Dr. Masih from a West Virginia pharmacist alleging that Dr. Masih was writing large quantities of controlled substances resulting in Dr. Masih's patients becoming addicted to the substances and leading to the illegal diversion of the substances.
4. Dr. Masih filed a timely response to the Complaint.
5. In March 2009, the Complaint Committee initiated its own complaint based upon a January 2009 written report from a physician relating to care and treatment ostensibly rendered to four (4) separate patients by Dr. Masih.

6. Dr. Masih filed a timely response to the Complaint.
7. The Complaint Committee of the Board ("the Committee"), after reviewing the complaint, initiating its own complaint, and reviewing the responses, ordered investigation into these matters and investigation ensued. This investigation included, among other elements, the acquisition of medical records of Dr. Masih's patients and Board of Pharmacy reports.
8. In November 2009, the Committee referred these matters to an independent expert, John A. Parker, Jr., M.D., for an independent and impartial review of the materials in these matters, including, but not limited to medical charts, Board of Pharmacy reports, the complaints and the responses of Dr. Masih.
9. Dr. Parker provided a report of his findings in December of 2009.
10. Based upon his review of the patient charts of Dr. Masih, including chronic pain patients, Dr. Parker found that pain contracts were missing from many of Dr. Masih's charts.
11. The standard of care for the treatment of chronic pain patients includes the use of a pain contract.
12. Based upon his review of the patient charts of Dr. Masih, including chronic pain patients, Dr. Parker found that urine drug screens were likewise missing from many of these charts.
13. The standard of care for the treatment of chronic pain patients includes the use of regular urine drug screens.
14. Based upon his review of the patient charts of Dr. Masih, including chronic pain patients, Dr. Parker found that when urine drug screens were done, inconsistent results (to wit, that the patient had something in his/her urine that had not been prescribed, or did not have something that was prescribed) were frequently not mentioned in the notes, and controlled

substances continued to be prescribed. Additionally, inconsistent results were not always properly addressed.

15. The standard of care for the treatment of chronic pain patients includes charting of urine drug screen results and addressing all inconsistent urine drug screens.

16. Based upon his review of the patient charts of Dr. Masih, including chronic pain patients, Dr. Parker found that Board of Pharmacy ("BOP") reports were frequently missing from Dr. Masih's charts and/or did not have BOP reports for each visit.

17. The standard of care for the treatment of chronic pain patients includes the use of regular BOP checks.

18. Based upon his review of the patient charts of Dr. Masih, including chronic pain patients, Dr. Parker found that for several patients, Dr. Masih prescribed three (3) or more narcotics concurrently.

19. Prescribing to a patient three (3) or more narcotics concurrently is outside of the standard of care for the treatment of chronic pain patients.

20. Based upon his review of the patient charts of Dr. Masih, including chronic pain patients, Dr. Parker found that for several patients, Dr. Masih prescribed two (2) short acting narcotics concurrently.

21. Prescribing to a patient two (2) short acting narcotics is outside of the standard of care for the treatment of chronic pain patients.

22. Based upon his review of the patient charts of Dr. Masih, including chronic pain patients, Dr. Parker found that for several patients, Dr. Masih renewed narcotic or benzodiazepine prescriptions before they were due.

23. Renewing a patient's narcotic and/or benzodiazepine prescription before it is due is outside the standard of care for the treatment of chronic pain patients.
24. Based upon his review of the patient charts of Dr. Masih, including chronic pain patients, Dr. Parker found that several of Dr. Masih's patients received prescriptions for controlled substances, including narcotics and benzodiazepines, after the patient over-dosed on controlled substances and/or attempted suicide.
25. Prescribing controlled substances to a patient, including narcotics and benzodiazepines, after a patient has over-dosed on controlled substances and/or attempted suicide, is outside the standard of care for the treatment of chronic pain patients.
26. Based upon his review of the patient charts of Dr. Masih, including chronic pain patients, Dr. Parker found that several of Dr. Masih's notes lack physical exam findings (or any physical exam at all except for vital signs) to support the diagnosis given and that in other notes diagnosis were made that were not supported by ancillary studies.
27. Basic standard of care for any office visit includes, but is not limited to, a physical exam designed to investigate the chief complaint, and/or any items uncovered in the review of symptoms, and ancillary tests and exams, if needed, in order to come to a diagnosis.
28. Based upon his review of the patient charts of Dr. Masih, including chronic pain patients, and other materials, Dr. Parker found that Dr. Masih prescribed controlled substances to family members.
29. It is outside the standard of care to prescribe to family members, particularly when the prescriptions are for controlled substances.
30. Based upon the totality of his review of the materials in this matter, Dr. Parker found that on multiple occasions Dr. Masih failed to practice medicine with that level of care,

skill and treatment which is recognized by a reasonable, prudent physician engaged in the same or similar specialty as being acceptable under similar conditions and circumstances.

COUNT I

31. The Petitioner incorporates by reference paragraphs one (1) through thirty (30) as fully restated herein.

32. Dr. Masih prescribed prescription drug(s), including controlled substances, other than in good faith and in a therapeutic manner in accordance with the accepted medical standards and in the course of his professional practice as a physician, in violation of W.Va. Code §30-3-14(c)(13) and (17); and 11 CSR 1A 12.1(e) and 12.2(a)(A), (B), (C), and (D).

COUNT II

33. The Petitioner incorporates by reference paragraphs one (1) through thirty (30) as fully restated herein.

34. Dr. Masih failed to practice medicine with that level of care, skill and treatment recognized by a reasonable, prudent physician engaged in the same or similar specialty as being acceptable under similar conditions or circumstances in violation of W.Va. Code §30-3-14(c)(17) and 11 CSR 1A 12.1(x).

COUNT III

35. The Petitioner incorporates by reference paragraphs one (1) through thirty (30) as fully restated herein.

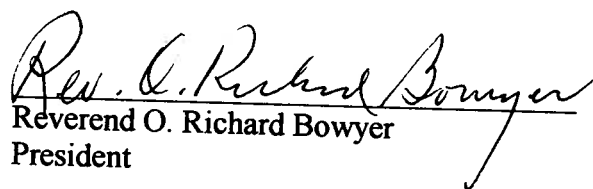
36. Dr. Masih engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof in violation of W.Va. Code §30-3-14(c)(17), 11 CSR 1A 12.1(e) and 12.2(d).

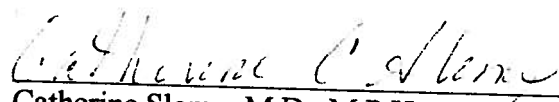
37. The continued practice by Dr. Masih as a physician in the State of West Virginia will adversely affect the health and welfare of patients.

Accordingly, the Respondent, Dr. Masih, is hereby notified that a hearing will be convened on August 24, 2011, at 9:00 A.M., and shall continue thereafter from day to day until completed, in the offices of the West Virginia Board of Medicine, 101 Dee Drive, Suite 103, Charleston, West Virginia. The purpose of the hearing will be to determine whether disciplinary action should be imposed upon Dr. Masih's license to practice medicine in West Virginia. The Respondent, Dr. Masih, must be present in person, and may be accompanied by an attorney if he desires, and may present witnesses or other evidence which he may desire to present on his behalf. Failure of Dr. Masih to serve an answer on Petitioner Board within thirty (30) days after service of the Second Amended Complaint and Notice of Hearing upon him entitles Petitioner Board to take all of the allegations as confessed by Dr. Masih, under provisions of 11 CSR 3 11.5(s). Dr. Masih has selected as Hearing Examiner, Betty L. Kaplan, Esq., to preside at, and conduct, the proceedings.

Dated this 14 day of February, 2011.

WEST VIRGINIA BOARD OF MEDICINE


Reverend O. Richard Bowyer
President


Catherine Slemp, M.D., M.P.H.
Secretary

CERTIFICATE OF SERVICE

I, Deborah Lewis Rodecker, Esq., General Counsel for Petitioner, the West Virginia Board of Medicine, do hereby certify that I have served the foregoing "Second Amended Complaint and Notice of Hearing" upon Respondent, Rajan B. Masih, M.D., by depositing a true and accurate copy thereof in an envelope and transmitting the same via certified U.S. Mail, with postage prepaid, this 14th day of February, 2011, addressed as follows:

Rajan B. Masih, M.D.
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